

## Department of Veterans Affairs

## § 21.6056

are to be applied by Vocational Rehabilitation and Employment professional staff members to determine whether information of record supports a determination that a veteran age 50 or older has good potential for employment. Any reasonable doubt shall be resolved in the veteran's favor.

(Authority: 38 U.S.C. 1524(a)(2))

(c) *Indicators of good potential for employment.* Indicators of good potential for employment include one or more of the following:

- (1) A period of stable employment prior to the onset of disability.
- (2) Strong motivation to return to the work force.
- (3) Successful pursuit of education or training.
- (4) Cooperation in treatment of disabling conditions.
- (5) Stabilization of medical conditions or substance abuse problems.
- (6) Participation in therapeutic work programs.
- (7) Evidence of recent sustained job-seeking.

(Authority: 38 U.S.C. 1524(b)(1))

(d) *Contraindications of good potential for employment.* Contraindications of good potential for employment include one or more of the following:

- (1) A lifelong history of unstable employment with long periods of employment before the onset of disability.
- (2) Being out of the labor market for five years or more preceding the evaluation.
- (3) Unsuccessful pursuit of education or training.
- (4) Noncooperation in the treatment of disability.
- (5) Need for an additional period of medical care or treatment before training would be feasible.
- (6) Nonparticipation in prescribed or recommended therapeutic work programs.
- (7) Failure of previous vocational rehabilitation programs to achieve employability.

(Authority: 38 U.S.C. 1524(a)(2))

(e) *Negative determinations.* If VA does not find good employment potential, VA will notify the veteran that he or

she is not eligible to receive an evaluation. Since this finding will preclude program participation, the veteran will be informed of his or her appellate rights as described in § 21.59 of this part.

(1) If the determination cannot be made on the evidence of record, VA shall advise the veteran and may provide him or her with an opportunity to submit additional information within a reasonable time.

(2) A veteran's disagreement with a negative finding shall be considered evidence of motivation for employment, and may, when considered in relation to other information, provide a basis for finding that good employment potential exists;

(3) If the final VA determination, following a review of a contested negative finding, is that good potential for achieving employment does not exist, a personal interview will be scheduled, and the reasons for VA's determination shall be discussed with the veteran.

(Authority: 38 U.S.C. 1524(a)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990]

### § 21.6056 Cooperation of the veteran in an evaluation.

(a) *Cooperation of the veteran.* The cooperation of the veteran is essential to a successful evaluation. The purpose of the evaluation and the steps in the process shall be explained to the veteran, and the importance of his or her cooperation shall be stressed. If the veteran does not cooperate in the initiation or completion of the evaluation, the counseling psychologist shall make a reasonable effort through counseling to secure the veteran's cooperation.

(Authority: 38 U.S.C. 1524(a)(3))

(b) *Consequences of noncooperation when evaluation is required.* If the veteran fails to report for or cooperate in a required evaluation and the counseling psychologist has made a reasonable effort to secure his or her participation, VA shall take appropriate action, including discontinuance of the evaluation under the provisions of § 21.364 of this part. If the veteran's case is discontinued under § 21.364 of

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this part, the Veterans Service Center will be notified. The Veterans Service Center also will be informed if the reason for discontinuance is subsequently removed and the evaluation process is resumed.

(Authority: 38 U.S.C. 1524(a)(1))

(c) *Consequences of noncooperation when evaluation is not required.* If the veteran fails to report for or cooperate in an optional evaluation and the counseling psychologist has made a reasonable effort to secure the veteran's participation, VA shall take appropriate action, including discontinuance of the evaluation under the provisions of § 21.364 of this part. The evaluation may be resumed if the reason for the discontinuance is removed and the veteran is otherwise eligible.

(Authority: 38 U.S.C. 1524(a)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 71 FR 28586, May 17, 2006]

## § 21.6058 Consequences of evaluation.

(a) *Eligible veteran may choose to participate.* If VA finds, based on the evaluation, that achievement of a vocational goal by the veteran is reasonably feasible, the veteran shall be offered and may elect to pursue a vocational training program. If the veteran elects to pursue such a program, the program shall be designed in consultation with the veteran in order to meet the veteran's individual needs, and shall be set forth in an Individualized Written Rehabilitation Plan (IWRP) under the provisions of § 21.84 of this part or an Individualized Employment Assistance Plan (IEAP) under § 21.88 of this part.

(Authority: 38 U.S.C. 1524(b)(1))

(b) *Veteran ineligible to participate.* A veteran for whom achievement of a vocational goal is not found reasonably feasible shall be notified of this finding and be informed of his or her appellate rights as described in § 21.59 of this part. The veteran shall be provided the assistance described in § 21.50(b)(9) of this part.

(Authority: 38 U.S.C. 1524(b)(1))

## 38 CFR Ch. I (7–1–08 Edition)

## § 21.6059 Limitations on the number of evaluations.

(a) *Number of evaluations.* No more than 3,500 evaluations of the reasonable feasibility of achieving a vocational goal may be given during any 12-month period, beginning on February 1, 1985, and each subsequent February 1 during the program period.

(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100–227)

(b) *Cases counted as evaluation.* An evaluation is deemed to be countable against the 3,500 limit permitted during each 12-month period when the following conditions are met:

(1) The veteran is provided one or more personal interviews by a counseling psychologist; and

(2) A determination of the reasonable feasibility of achieving a vocational goal is made by the counseling psychologist.

(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100–227)

(c) *Cases not counted as evaluations.* Computation of the number of evaluations which may be provided in a 12-month period shall exclude cases in which:

(1) The veteran under age 45 awarded pension during the program period is unable to participate for reasons beyond his or her control;

(2) Review of available information does not indicate a good potential for employment of other qualified veterans.

(3) The veteran either fails to keep a scheduled appointment to complete the evaluation or withdraws the claim for an evaluation, or

(4) The veteran who has completed an evaluation requires or requests a re-evaluation.

(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100–227, Pub. L. 101–237)

(d) *Priority.* If a veteran below age 45 for whom an evaluation is required cannot be provided an evaluation during a particular 12-month period because of the limitation on the number of evaluations, the veteran will be given first priority for evaluation during the following 12-month period, or